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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

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In the Matter of:

PURDUE PHARMA L.P., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, New York 10601

VIA ZOOM FOR GOVERNMENT VIDEOCONFERENCE

May 18, 2022

10:06 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: Art

1 19-23649-rdd Purdue Pharma L.P., et al.

2 Ch 11

3 10:00 AM

4

5 Notice of Agenda/Agenda for May 18, 2022 Hearing [ECF #4843]

6

7 UNCONTESTED MATTERS:

8 ZOOM VIDEOCONFERENCE re Motion for Entry of Order Pursuant

9 to 11 U.S.C. §§ 105(a), 107(b) and Fed. R. Bankr. P. 9018

10 Authorizing the Filing of Certain Information under Seal in

11 Connection with the Motion of Debtors for Entry of an Order

12 Authorizing Implementation of 2022 Key Employee Incentive

13 Plan and 2022 Key Employee Retention Plan [ECF No. 4708]

14

15 ZOOM VIDEOCONFERENCE re Motion of Debtors for Entry of an

16 Order Authorizing Implementation of 2022 Key Employee

17 Incentive Plan and 2022 Key Employee Retention Plan [ECF No.

18 4707]

19

20 ZOOM VIDEOCONFERENCE re Statement in response to the Debtors

21 Motion for Entry of an Order Authorizing Implementation of

22 2022 Key Employee Incentive Plan and 2022 Key Employee

23 Retention Plan [4742]

24

25

1 ZOOM VIDEOCONFERENCE re Debtors' Statement in Support of  
2 Motion of Debtors for Entry of an Order Authorizing  
3 Implementation of 2022 Key Employee Incentive Plan and 2022  
4 Key Employee Retention Plan [4794]

5

6 ZOOM VIDEOCONFERENCE re the Non-Consenting States' Limited  
7 Objection to Motion of Debtors for Entry of an Order  
8 Authorizing Implementation of 2022 Key Employee Incentive  
9 Plan And 2022 Key Employee Retention Plan [ECF No. 4766]

10

11 ZOOM VIDEOCONFERENCE re Notice Of Filing Of Exhibit 2 to the  
12 Non-Consenting States' Limited Objection to Motion of  
13 Debtors for Entry of an Order Authorizing Implementation of  
14 2022 Key Employee Incentive Plan and 2022 Key Employee  
15 Retention Plan [ECF No. 4768]

16

17 ZOOM VIDEOCONFERENCE re Notice of Partial Adjournment of  
18 Hearing on Debtors' Motion for Entry of an Order Authorizing  
19 Implementation of 2022 Key Employee Incentive Plan and 2022  
20 Key Employee Retention Plan [ECF No. 4795]

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1 ZOOM VIDEOCONFERENCE re Final Application of Reed Smith LLP  
2 as an Ordinary Course Professional for Compensation for  
3 Services Rendered in Excess of Tier 1 OCP Cap for the Period  
4 from September 1, 2021 through February 28, 2022  
5 [ECF No. 4671]

6  
7 ZOOM VIDEOCONFERENCE re Notice of Hearing on Final  
8 Application of Reed Smith LLP as an Ordinary Course  
9 Professional for Compensation for Services Rendered in  
10 Excess of the Tier 1 OCP Cap for the Period from September  
11 1, 2021 through February 28, 2022 [ECF No. 4710]

12  
13 ZOOM VIDEOCONFERENCE re Notice of Filing of Proposed Order  
14 Granting the Final Application of Reed Smith LLP as an  
15 Ordinary Course Professional for Compensation for Services  
16 Rendered in in Excess of Tier 1 OCP Cap for the Period from  
17 September 1, 2021 through February 28, 2022 [ECF No. 4774]

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19 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
20 Claim Motion [ECF No. 4629]

21  
22 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
23 Claims Bar Date filed by Glenn Dawson [ECF No. 4617]

24  
25

1 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
2 Claim Motion [ECF No. 4647]

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4 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
5 Claims Bar Date filed by Tony Tector Callihan [ECF No. 4633]

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7 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
8 Claim Motion [ECF No. 4650]

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10 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
11 Claims Bar Date filed by Tyler L. Ward [ECF No. 4646]

12  
13 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
14 Claim Motion [ECF No. 4669]

15  
16 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
17 Claims Bar Date filed by Daniel Joseph Rudd [ECF No. 4653]

18  
19 CONTESTED MATTERS:

20 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
21 Claim Motion [ECF No. 4597]

22 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
23 Claims Bar Date, filed by Michael T. O'Brien [ECF No. 4580]

24  
25

1 ZOOM VIDEOCONFERENCE re Supplemental Statement Regarding  
2 Late Claim Motion [ECF No.4651]

3

4 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
5 Claims Bar Date filed by Anthony Kristopher Olson [ECF No.  
6 4583]

7

8 ZOOM VIDEOCONFERENCE re Supplemental Statement Regarding  
9 Late Claim Motion [ECF No. 4652]

10

11 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
12 Claims Bar Date filed by James Roland Sprayberry [ECF No.  
13 4618]

14

15 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
16 Claims Bar Date filed by Otis William Dahman [ECF No. 4619]

17

18 ZOOM VIDEOCONFERENCE re Supplemental Statement Regarding  
19 Late Claim Motion [ECF No. 4644]

20

21 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
22 Claims Bar Date filed by Christopher Allan Freeman [ECF No.  
23 4620]

24

25

1 ZOOM VIDEOCONFERENCE re Supplemental Statement Regarding  
2 Late Claim Motion [ECF No. 4643]

3

4 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
5 Claim Motion [ECF No. 4650]

6

7 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
8 Claims Bar Date filed by Trever James Olsen [ECF No. 4645]

9

10 ZOOM VIDEOCONFERENCE re Letter from Trever Olsen Regarding  
11 Inability to Attend Hearing Due to Penitentiary COVID  
12 Protocol [ECF No. 4702]

13

14 ZOOM VIDEOCONFERENCE re Motion to File Proof of Claim after  
15 Claims Bar Date filed by Nickolas C. Colbert [ECF No. 4678]

16

17 ZOOM VIDEOCONFERENCE re Letter from Nickolas C. Colbert  
18 Regarding Inability to Attend Hearing Due to Penitentiary  
19 COVID Protocol [ECF No. 4761]

20

21 ZOOM VIDEOCONFERENCE re Notice of Hearing Regarding Late  
22 Claim Motion [ECF No. 4685]

23

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1 ZOOM VIDEOCONFERENCE re Debtors' and the Official Committee  
2 of Unsecured Creditors' Joint Omnibus Objection to Motions  
3 to File Proofs of Claim after Claims Bar Date [ECF No. 4767]  
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5 Notice of Filing of Proposed Order Granting Late Claim  
6 Motions [ECF No. 4765]  
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1 P R O C E E D I N G S

2 THE COURT: Okay. Good morning. This is Judge  
3 Drain. We're here in In re Purdue Pharma L.P., et al. I  
4 have the agenda for today's hearing and I'm happy to go down  
5 the agenda in the order that's on it. So I'm not sure who's  
6 going to be speaking first for the debtors but you can go  
7 ahead.

8 MR. HUEBNER: Thank you very much, Your Honor.  
9 Good morning. For the record, Marshall Huebner --

10 THE COURT: I'm sorry. We're not -- I think we  
11 have to turn up the mic.

12 THE CLERK: Go ahead now.

13 THE COURT: Good?

14 THE CLERK: Yes.

15 THE COURT: You can go ahead. Now we turned --

16 (Pause)

17 MR. HUEBNER: Good morning again, Your Honor.

18 THE COURT: No. Now we turned --

19 THE CLERK: Let's try it one more time. Okay.

20 Mr. Huebner?

21 MR. HUEBNER: Yep. I'm here.

22 THE COURT: Okay. Now we hear you fine.

23 MR. HUEBNER: Okay. Take three.

24 THE COURT: We had some people with very loud  
25 voices yesterday so we turned down the mic here and didn't

1 turn it back up.

2 MR. HUEBNER: Fair enough. Good morning, Your  
3 Honor. For the record, Marshall Huebner, Davis Polk, for  
4 the debtors. Really nothing in the way of (indiscernible)  
5 remarks today. And we actually (indiscernible) going down  
6 the agenda in its established order is (indiscernible) by  
7 Darren Klein.

8 THE COURT: Okay. Very well.

9 MR. KLEIN: Good morning, Your Honor. Can you  
10 hear me okay?

11 THE COURT: Yes. I hear you fine. Thanks.

12 MR. KLEIN: Thank you. For the record, Darren  
13 Klein of Davis Polk & Wardwell on behalf of the debtors.

14 I'm getting some feedback, Your Honor. Are you  
15 hearing that?

16 THE COURT: No. You're coming through clearly.

17 MR. KLEIN: Okay. Thank you.

18 On April 27th, Your Honor, the debtors filed their  
19 motion seeking this Court's approval for the company's  
20 annual fee employee incentive and retention plan at docket  
21 4707. I am pleased to report that no party objects to the  
22 relief in that motion for Your Honor's consideration this  
23 morning. The so-called non-consenting states group filed a  
24 limited objection solely as to Mr. Landau's participation in  
25 the (indiscernible) at docket 4766. That relief is

1 (indiscernible) and is not at issue today.

2 The U.S. trustee filed a statement in response to  
3 the debtors' motion at docket 4742 but did not object at  
4 least not therein.

5 The debtors also, as is their habit,  
6 (indiscernible) committee of unsecured creditors, the ad hoc  
7 committee of governmental and other contingency litigation  
8 claimants and the multi-state governmental (indiscernible)  
9 group (indiscernible) filing. And the motion already  
10 reflected input from those discussions. Those discussions  
11 continued after filing (indiscernible) and resulted in  
12 certain agreed upon modifications both as to payment timing  
13 and to the performance metric for the KEIP which are set  
14 forth in the statement of support filed on Monday at docket  
15 number 4794. I will walk Your Honor through those changes  
16 shortly.

17 But before we start --

18 MR. HUEBNER: Your Honor, sorry. Let me jump in a  
19 for a minute. It may be clear in the courthouse but there's  
20 tremendous feedback for everybody on the line. I don't see  
21 any other microphones on other than Mr. Klein's and the  
22 Court's. I wonder if maybe there are two mics on in the  
23 courtroom that are causing feedback from one another for  
24 everyone else. I just mention because the audio transcript  
25 may be impossible to provide. But everything that's being

1 said (indiscernible) twice for all the listeners.

2 THE COURT: Okay. All right. Thanks for letting  
3 us know. Can you make sure everything's good?

4 THE CLERK: (Indiscernible).

5 THE COURT: Okay.

6 THE CLERK: Mr. Huebner, is this better?

7 MR. HUEBNER: Just give it another -- say  
8 something else, Darren.

9 MR. KLEIN: I'm still hearing feedback from you,  
10 Marshall.

11 MR. HUEBNER: Yeah. It's still -- everything is  
12 echoing (indiscernible).

13 THE COURT: Do you want to just re-log in?

14 THE CLERK: Sure.

15 MR. HUEBNER: With apologies, obviously,  
16 (indiscernible).

17 THE COURT: That's fine. We want the -- we want  
18 people not to be hearing themselves multiple times.

19 MR. KLEIN: Okay. I'll try again. I'm still  
20 hearing the feedback.

21 (Pause)

22 THE CLERK: It should be (indiscernible) now.

23 THE COURT: Okay. Try it again, Mr. Klein.

24 MR. KLEIN: Not a problem, Your Honor. Since Your  
25 Honor was hearing clearly, I won't start from the beginning.

1 THE COURT: Right. Someone else (indiscernible),  
2 you should raise your hand if you're hearing echoes. Still  
3 hearing the echoes? It's really bad. I think we're going  
4 to have to log out. We thought we fixed it but we'll have  
5 to log out and then log back in again.

6 (Pause)

7 MR. HUEBNER: Your Honor, if it's not too cheeky a  
8 suggestion, it may be that putting the Court's microphone on  
9 mute while others are speaking might actually solve the  
10 problem completely.

11 THE COURT: Well, but that's not how -- that's not  
12 --

13 MR. HUEBNER: I don't know if the Court --

14 THE COURT: I mean, that's not how it normally  
15 works. It's just not --

16 MR. KLEIN: Your Honor, while Mr. Huebner was  
17 speaking, I didn't hear any feedback. Maybe the problem's  
18 been fixed?

19 THE COURT: All right.

20 THE CLERK: Oh. I think we're fixed.

21 THE COURT: Okay. It's been -- wait, guys. It's  
22 been fixed. So --

23 UNIDENTIFIED SPEAKER: Oh. It's been fixed?

24 THE COURT: All right.

25 MR. KLEIN: (Indiscernible). And since Your



1 Honor, I believe, was hearing me clearly, I won't go back to  
2 the top. So we'll just continue.

3 THE COURT: Okay.

4 MR. KLEIN: Let me first turn to a bit of  
5 housekeeping, Your Honor. At docket number 4708, the  
6 debtors filed a motion to seal a very small and surgical  
7 portion of this year's performance metric --

8 THE COURT: Right.

9 MR. KLEIN: -- which were (indiscernible) in  
10 consultation with UCC, AHC and MSGE. Those redacted metrics  
11 were further modified in negotiation with the creditor  
12 group. So there's also a small portion of the statement in  
13 support that was likewise filed under seal. No party has  
14 objected but I'm happy to address any questions Your Honor  
15 may have. Otherwise, would ask Your Honor to order the  
16 sealing.

17 THE COURT: Right. I don't have any questions.  
18 I've reviewed the motion and the clean and redacted versions  
19 of the documents. As you say, the material that would be  
20 redacted is limited. And it's the type of material that  
21 could give a competitive advantage to a competitor and  
22 therefore would qualify as protected commercial information  
23 under Section 107(b) of the Bankruptcy Code and Rule 9018.  
24 So I'll grant that motion.

25 I think you should check both affidavits to make

1 sure that the redacted form is what is on the docket. And  
2 you can email the order which would be along the lines of  
3 the prior orders that I've granted in this case under  
4 107(b) .

5 MR. KLEIN: Will do so, Your Honor.

6 THE COURT: Okay.

7 MR. KLEIN: And turning to those affidavits, the  
8 declarations, that were filed as Exhibits D and C of the  
9 motion, one from Mr. Ronan, the debtors' CFO, and one from  
10 Ms. Gartrell, a senior director at Willis Towers Watson.  
11 The declaration of Mr. Ronan builds upon the prior  
12 declaration submitted by the former CFO, Mr. Lowne. The  
13 debtors would move to admit both of those declarations into  
14 evidence. I see Mr. Ronan on the line and I believe Ms.  
15 Gartrell is as well.

16 THE COURT: Okay. Well, I've reviewed those  
17 declarations. Mr. Ronan, would you just raise your right  
18 hand, please?

19 (Terrence Ronan sworn)

20 THE COURT: Okay. I think you might be on mute,  
21 Mr. Ronan. I saw you say "I do" but --

22 So, Mr. Ronan --

23 MR. RONAN: I do.

24 THE COURT: Very well. So, Mr. Ronan, you  
25 submitted this declaration which is intended to be your

1 direct testimony on this motion. It's dated April 27th.  
2 Sitting here today on May 18th, is there anything in it that  
3 you'd wish to change?

4 MR. RONAN: Nothing, Your Honor, other than what  
5 is in the debtors' statement of support of the motion --

6 THE COURT: The one that was recently --

7 MR. RONAN: -- regarding the change --

8 THE COURT: -- that was recently filed.

9 MR. RONAN: Yes.

10 THE COURT: That just updates the terms of the  
11 agreed changes to the timing primarily that Mr. Klein is  
12 going to summarize.

13 All right. I --

14 MR. RONAN: Yes, Your Honor. That's correct.

15 THE COURT: I reviewed the declaration as well as  
16 that statement and I don't have any questions. Since this  
17 motion is unopposed, I'm assuming no one has any questions  
18 of you.

19 (Declaration of Terrence Ronan, chief financial officer  
20 of the debtors, received in evidence)

21 But I'll ask. Okay. And for a moment there, I  
22 saw Ms. Gartrell. There she is. All right. So, Ms.  
23 Gartrell, would you raise your right hand, please?

24 (Josephine Gartrell sworn)

25 THE COURT: Okay. So, Ms. Gartrell, you also

1 submitted a declaration dated April 27, 2022 that was  
2 intended to be your direct testimony in connection with this  
3 motion. Knowing that and sitting here today on May 18th, is  
4 there anything in your declaration that you wish to change?

5 MS. GARTRELL: No, Your Honor. Nothing more than  
6 what was already identified by Mr. Klein regarding the  
7 payouts and the metrics.

8 THE COURT: Okay. All right. Fine. And again,  
9 I've reviewed the declaration as well as the debtors' recent  
10 statement that reflects the changes. And I don't have any  
11 questions.

12 MS. GARTRELL: Okay. Thank you, Your Honor.

13 THE COURT: Okay. Thank you.

14 (Declaration of Josephine Gartrell, senior director at  
15 Willis Towers Watson PLC, received in evidence)

16 THE COURT: All right. So you can go ahead, Mr.  
17 Klein.

18 MR. KLEIN: Thank you, Your Honor. I'll just  
19 briefly hit the highlights of the compensation plan since  
20 they're by now quite familiar to you, Your Honor. The 2020,  
21 '22 plans were designed to parallel last year's program  
22 which in turn (indiscernible) the 2020 programs and the  
23 company's pre-petition practices.

24 Importantly, this year's programs continue to  
25 carry forward the substantial concessions the debtors first

1 agreed to back in 2020 and have honored ever since. The  
2 2022 KEIP includes the same two elements as the predecessor  
3 programs and annual award and a long-term grant. As always,  
4 the payments under the KEIP will be subject to the debtors'  
5 achievement of rigorous demanding performance metrics at  
6 threshold levels.

7 This year's performance metrics were again set  
8 using the same process Your Honor has previously found to  
9 produce appropriate incentivizing corporate targets at the  
10 company. Indeed, this year's process was even more rigorous  
11 as the development of this year's metric scorecard was  
12 subject to consultation with the UCC, the AHC and the MSGE.

13 As set forth in Mr. Ronan's declaration, the 2022  
14 performance metrics are ambitious and difficult to achieve  
15 both individually and when considered in the aggregate.  
16 Successful performance of this year's scorecard will again  
17 require the 2022 KEIP participants' diligence and committed  
18 effort. And the 2022 performance metrics present a  
19 meaningful risk of not being met at threshold levels  
20 required for the payment.

21 Turning to the KERP, Your Honor, the company's  
22 broad-based retention program for non-insiders includes the  
23 same three elements as last year's curve in a similar dollar  
24 amount. There's the KERP annual award with an aggregate  
25 payment of approximately \$15.6 million which is slightly

1 lower than the 2021 number of 16.1 million. The KERP  
2 long-term award with aggregate payments of approximately 5.7  
3 million which, again, is slightly lower than the approximate  
4 6 million from 2021. And finally the targeted retention  
5 award with aggregate payments of approximately 7.2 million  
6 which is the same amount as was authorized last year.

7 There is in the target award one additional  
8 qualifier on a portion of the funds, Your Honor, for  
9 \$780,000 which, if spent at all, will be subject to  
10 consultation with the UCC, the AHC, MSGE, as needed, in  
11 response to changing business conditions. In no event will  
12 any of those amounts exceed the aggregate cap or go to any  
13 insiders.

14 Finally, Your Honor, I do want to highlight one  
15 additional change we requested with respect to the 2020  
16 long-term KERP award. As Your Honor may or may not  
17 remember, the initial 2020 long-term award had a springing  
18 trigger that would habitate earlier if emergence happened.  
19 From 2021 and forward, in negotiation with the stakeholders,  
20 we have ceased to have the springing forward for emergence.  
21 However, back in 2020, when everybody agreed to the  
22 springing nature of emergence, we all thought emergence  
23 would have happened by now but given the appellate process,  
24 it's lengthened. And in agreeing to the payment date, the  
25 debtors agreed to a discount of about 40 percent for those

1 employee fee payments which everybody agreed was the right  
2 number given the expected emergence back in late 2020. Now  
3 those payments not due until later, what we're requesting  
4 from the Court is that we allow them to be paid now but,  
5 importantly, they will still have the same retentive effect  
6 because we won't be changing the clawback date with respect  
7 to them.

8 Unless Your Honor has any questions, I'll briefly  
9 hit the agreed upon modifications that were --

10 THE COURT: It's with the -- it's paid now but  
11 it's with the same discount.

12 MR. KLEIN: Paid now with the same discount. It  
13 affects 97 participants. It's about 60,000 per participant.  
14 And for the clawback, they will remain unchanged.

15 Finally, turning towards the post-filing  
16 modifications that we've agreed with the UCC, AHC and MSGE,  
17 with respect to the KEIP, we've agreed to delay payment of  
18 the annual portion of the award till March 15th, 2023 rather  
19 than paying some of it, a percentage of it, in the fall.

20 Other timing issues with the KERP, we agreed to  
21 not have as much of it paid earlier rather than later.  
22 Instead of 50/50, if you rank is below vice president, it'll  
23 be one-third in October and two-thirds in March. And if  
24 you're vice president or above, it's only 25 percent on  
25 October 1st, 2022 and the remaining 75 percent in March of

1 2023.

2 In addition, as set forth in the sealed portion of  
3 the statement, we've agreed to make certain modifications to  
4 the KEIP performance metrics.

5 And finally, as we agreed last year, we've agreed  
6 again with the UCC, the AHC and the MSGE that so long as  
7 emergence has not yet occurred, we will again consult with  
8 them in measuring performance against this year's scorecard  
9 and developing next year's scorecard. And we have agreed  
10 that neither of those tasks will be completed before January  
11 31st, 2023.

12 And with those changes, we're happy to confirm  
13 that no party, to our knowledge, objects to the proposed  
14 KERP, the 2022 performance metrics or the participation of  
15 the general counsel in the KEIP.

16 I'm happy to address any questions Your Honor may  
17 have.

18 THE COURT: Okay. I don't have any questions.  
19 And based on my review of the motion and the changes to the  
20 motion and the agreement in the sense that at this point  
21 there are no objections to what's before me today, I'll  
22 grant the motion.

23 The motion seeks approval of two different  
24 employee compensation plans for 2022. The first is the so-  
25 called KEIP, which is -- was originally sought for two



1 insiders as defined in Section 503 of the Code. The relief  
2 today would apply to just one, the debtors' general counsel,  
3 and EVP.

4 There were no objections to that request. The  
5 declarations make it clear, as does my comparison of this  
6 proposal to the 2021 KEIP, that the general counsel's  
7 compensation under the KEIP is consistent with a prior KEIP  
8 compensation that I previously approved and is supported  
9 under the facts of this case as a reasonable exercise of the  
10 debtors' business judgment informed heavily by the process  
11 the debtors went through with each constituents in the case  
12 including the unsecured creditors' committee and the two  
13 governmental committees.

14 The motion also seeks approval of the key employee  
15 retention plan for 2022 as it applies to non-insiders which  
16 Congress recognized can be done for non-insiders in Section  
17 503 of the Code. I held extensive hearing on whether the  
18 types of positions that are covered by the key employee  
19 retention plan are, in fact, not insider positions. And in  
20 those hearings in 2019 and 2020, I concluded that they were  
21 in fact non-insiders. There's no -- since 2019, there's  
22 been no objection. Since 2019's proposal, that is, there's  
23 been no objection on the basis that they weren't non-  
24 insiders.

25 As far as the debtors' business judgment and

1 approval -- and seeking approval of the KERP, again, the  
2 KERP has been vetted with key constituents in the case and  
3 subject to notice. And there have been no objections. It  
4 has been modified to make it even more retentive and, I  
5 think, appropriately fair. And therefore, I conclude that  
6 it is a proper exercise of the debtors' business judgment to  
7 first preserve the value in these businesses which will go  
8 one way or another to creditors and, on a going forward  
9 basis, to abating the opioid crisis. So I'll grant the  
10 motion as modified.

11 I've reviewed the proposed order that was attached  
12 to the debtors' recent statement that references the  
13 additional changes. Unless there are any other changes to  
14 it, I'm happy to enter that order. So you can email that to  
15 chambers.

16 MR. KLEIN: Thank you, Your Honor.

17 THE COURT: Okay. Very well.

18 MR. KLEIN: I believe the next agenda item is the  
19 Reed Smith fee application and some of (indiscernible)  
20 handling it.

21 THE COURT: Okay. So I'll look for the two orders  
22 from you, first, the sealing order and, second, the order  
23 granting the motion as set forth for today, the one portion  
24 of it being adjourned to next month, at a minimum.

25 MR. KLEIN: Yes, Your Honor. We'll get them over

1 to you.

2 THE COURT: All right. So, yes, the next matter  
3 on the agenda is what's labeled as a final fee application  
4 by Reed Smith LLP which was an ordinary course counsel  
5 although heavily involved in insurance coverage issues and,  
6 in light of that, went over the cap for an ordinary course  
7 counsel which is why I have a fee application before me.

8 MR. JAVIAN: Yes. Thank you, Your Honor. Good  
9 morning. For the record, Aaron Javian at Reed Smith LLP on  
10 behalf of the debtors. I'm joined this morning by my  
11 partner, Ann Kramer, who leads Reed Smith's engagement as  
12 special insurance counsel to the debtors in these cases.

13 I have two points to bring to your attention, Your  
14 Honor, in relation to our application today. The first is  
15 that in the proposed order that we filed on the docket, at  
16 docket number 4774, we note a reduction in the amount of the  
17 fees that we requested in the original overage application  
18 in the amount of \$3,839.50. That amount reflects the  
19 agreement that we reached with the fee examiner following  
20 the fee examiner's review of our time chart as entered  
21 during the submission period. So, Your Honor, in total,  
22 we're seeking approval for the payment of \$281,553.50 in  
23 fees incurred in excess of the Tier 1 OCP cap during the  
24 period from September 2021 through and including February  
25 2022.

1 THE COURT: Okay.

2 MR. JAVIAN: The --

3 THE COURT: And that also reflects the so-called  
4 quits pay discount?

5 MR. JAVIAN: Correct, Your Honor. This reflects  
6 all of the discounts that we have provided to the debtors  
7 during that period as well.

8 THE COURT: Okay. And there were no other  
9 developments on the application? I didn't see any  
10 objections to it. The only development was the reduction in  
11 light of the fee examiner's comment?

12 MR. JAVIAN: That's correct, Your Honor. That was  
13 the only development.

14 The other point I'd make just to -- as you flag,  
15 Your Honor, we fashioned this as our final application for  
16 overage charges in relation to the OCP retention. The  
17 reason it's final, as you mentioned, Your Honor, is because  
18 in consultation with the debtors and the U.S. trustee, given  
19 that we're approaching the aggregate cap for ordinary course  
20 professionals in these cases, we have applied to be retained  
21 as an estate professional from (indiscernible) March 1,  
22 2022. And so, going forward, we expect to be complying with  
23 the fee guidelines and procedures applying to estate  
24 professionals.

25 And, Your Honor, you'll note that that order --

1 that application was also uncontested and an order has been  
2 submitted to your chambers for presentment, I believe on May  
3 16th.

4 THE COURT: Okay. That answers my only other  
5 question which was why was this a final application because  
6 I know that the firm is heavily involved in the insurance  
7 litigation. But that explains it.

8 Okay. I reviewed the application and I will grant  
9 it based on that review and there being no objections and in  
10 light of the further reduction based on the fee examiner's  
11 review. So you can email that order with Schedule A to  
12 chambers.

13 MR. JAVIAN: Will do. Thank you, Your Honor.

14 THE COURT: Okay. And did you email -- I've been  
15 involved in a -- I had an all day trial yesterday. Did you  
16 email the retention application and proposed order to  
17 chambers, too?

18 MR. JAVIAN: We did, Your Honor, but we can resend  
19 that --

20 THE COURT: No. That's fine. I just --

21 MR. JAVIAN: -- today.

22 THE COURT: I just didn't get to it yesterday. I  
23 just wanted to make sure that it was emailed to chambers.

24 Okay. Thank you.

25 MR. JAVIAN: Thank you, Your Honor.

1 THE COURT: Okay. All right. The next three  
2 matters -- I'm sorry -- the next four matters on the  
3 calendar are unopposed motions to file proofs of claim late  
4 by four different individuals.

5 MS. KNUDSON: Good morning, Your Honor. For the  
6 record, Jacqueline Knudson of Davis Polk & Wardwell on  
7 behalf of the debtors. Can I be heard clearly?

8 THE COURT: Yes.

9 MS. KNUDSON: Thank you, Your Honor. As you just  
10 noted, the next four items on the agenda are the uncontested  
11 late claim motions. And I plan to address those together as  
12 I don't believe any of the movants are on Zoon today.

13 We've carefully reviewed the motions and based on  
14 the individualized assertions in the motions, the debtors  
15 believe that there is a colorable basis for granting the  
16 requested exceptions under the Pioneer factors. All four of  
17 these movants are incarcerated. And more importantly, each  
18 of these movants were incarcerated for the entirety of the  
19 bar date period which we were able to confirm through the  
20 creditors' committee's outreach to the Washington State  
21 Penitentiary where each of the movants are currently  
22 incarcerated.

23 Mr. Callihan, Mr. Ward and Mr. Rudd all allege in  
24 their motions that COVID-19 restrictions at their facility,  
25 lack of access through resources and coastal service delays

1 contributed to the untimely filings.

2 Mr. Dawson makes similar allegations in his motion  
3 and in two letters that were addressed to the debtors that  
4 were not filed on the docket.

5 As we've done in the past, we consulted with the  
6 creditors' committee and the ad hoc group of individual  
7 victims both of which have consented to the relief requested  
8 in the motions. Accordingly, the debtors would request that  
9 the proposed order submitted at docket number 4765, which is  
10 consistent with prior orders submitted for late claim  
11 motions, be entered.

12 I'm happy to answer any questions Your Honor may  
13 have.

14 THE COURT: Okay. Thanks.

15 So the bar date here was July 30, 2020. The bar  
16 date order was entered February 3, 2020. And according to  
17 Ms. Finegan's declaration describing the notice for the bar  
18 date, it was completed, or would be completed, by my  
19 calculation, around the third week of April. Is that right?

20 MS. KNUDSON: I believe that is correct, Your  
21 Honor. We did end up doing some additional noticing once  
22 the bar date was extended to July. But that is correct.  
23 The bulk of the noticing occurred in March and April and  
24 some in May.

25 THE COURT: Okay. So when you talk about the bar

1 date period, are you talking about the period up to July 30,  
2 2020 or are you -- each of these people was incarcerated not  
3 only on or before July 30, 2020 but actually in 2019.

4 Right? They were incarcerated --

5 MS. KNUDSON: That's correct.

6 THE COURT: -- during the whole notice period.

7 MS. KNUDSON: That's correct. And when I'm  
8 talking about the bar date period, I'm giving a little bit  
9 extra. So February through July when the bar date -- July  
10 30th when the bar date was.

11 THE COURT: Okay. All right. So I have reviewed  
12 these motions and I will grant them. They're unopposed and  
13 they're consistent with the facts set forth in motions that  
14 I have granted. The key fact, I think, in each of them is  
15 the representation, which I think the debtors have  
16 confirmed, that each of these people was incarcerated during  
17 the period before the bar date and, in fact, well before the  
18 bar date. And therefore, one can assume reasonably that  
19 they didn't really have notice notwithstanding the debtor's  
20 extensive notice campaign. And the one finding I did make  
21 during the confirmation hearing regarding notice was that  
22 that campaign, really not through a fault of the campaign  
23 but just to an inability to provide notice to those who are  
24 incarcerated, particularly during the -- especially because  
25 of the pandemic -- did have some limitations to it.



1           So although we're well along at this point, we're  
2           well over a year past the bar date, and at some point, and  
3           we may be reaching that point going forward, it may be too  
4           late to be filing such a motion even if someone didn't have  
5           notice before the bar date back in July of 2020. So I think  
6           these may squeak under the mine on that but I am concerned,  
7           going forward, that I think it may be worthwhile to ask,  
8           well, when did you get those of the bar date going forward  
9           given the length of time, again, that's passed since the bar  
10          date in what would be a new motion coming down the pipe.  
11          That's particularly the case because I think a lot of these  
12          motions pretty much follow a form. And that leaves open  
13          other issues that the form doesn't address.

14                 But I'll grant each of these four motions which  
15                 are unopposed. So you can email that order to chambers.

16                 MS. KNUDSON: Thank you, Your Honor. We'll do  
17                 that.

18                 THE COURT: And I'll note that there was notice of  
19                 that proposed order as well and no one has objected to it.

20                 So then we have several of these types of motions  
21                 where, unlike the last four, the debtors and the committee  
22                 have filed an objection.

23                 MS. KNUDSON: That's correct, Your Honor. As you  
24                 know, the next seven agenda items, and the eighth through --  
25                 agenda items 8 through 14 are seven additional late claim

1 motions. And again, I plan to address these together.

2 As set forth in our joint omnibus objection with  
3 the creditors' committee, based on the information provided  
4 by the movants in the motions, as well as additional  
5 information we were able to obtain from the Washington State  
6 Penitentiary, these requests to file late proofs of claim do  
7 not satisfy the strict application of the excusable neglect  
8 standard set forth in Bankruptcy Rule 9006 and the so-called  
9 Pioneer factors.

10 With respect to the most important Pioneer factor,  
11 the reason for the delay, the movants do not provide a  
12 sufficient reason why they could not file proofs of claim  
13 prior to the July 30, 2020 bar date. Although all of these  
14 movants are currently incarcerated, several of the movants  
15 were not incarcerated during the bar date period at all,  
16 that being between February and July of 2020. Several of  
17 the movants were incarcerated for only a small portion of  
18 the bar date period. And one of the movants has simply not  
19 provided enough information.

20 In particular, as set forth in his supplemental  
21 statement, Mr. O'Brien notes that he was not incarcerated  
22 until November of 2020, which is approximately four months  
23 after the bar date.

24 Based on information we obtained from the  
25 Washington State Penitentiary, we understand that Mr.

1 Anthony Olson and Mr. Colbert also were not incarcerated  
2 during the bar date period.

3 As set forth in their supplemental statements, Mr.  
4 Dahman and Mr. Freeman note that they were not incarcerated  
5 until May 20th of 2020, which is approximately three months  
6 after the debtors began providing robust notice of the bar  
7 date and of the need to file a proof of claim.

8 Similarly, based on information again that we were  
9 able to obtain from the Washington State Penitentiary, we  
10 understand that Mr. Trever Olsen was only incarcerated  
11 during the last month of the bar date period, that being  
12 July of 2020.

13 With respect to Mr. Sprayberry, he submitted a  
14 very short motion and although he asserts that he is  
15 currently incarcerated, he does not allege that he was  
16 incarcerated during the time leading up to the bar date.

17 So for these reasons, the general allegations set  
18 forth in the motions about the global pandemic and the  
19 postal service delays we believe fall short of providing a  
20 sufficient reason for the very long delay in filing a proof  
21 of claim in these cases.

22 Moreover, the debtors believe that allowing the  
23 late claims would encourage other latecomers seeking to  
24 assert claims against the debtors related to opioid use of  
25 filed claims which would ultimately prejudice the debtors

1 and, more importantly, the debtors' creditors.

2 Finally, the delay here has been substantial with  
3 these movants seeking to have claims that were filed between  
4 14 and 20 months after the bar date allowed as timely.

5 For these reasons and the reasons set forth in our  
6 papers, the debtors, who, again, are joined by the  
7 creditors' committee, respectfully request that the Court  
8 deny the motions. However, I will note that if these  
9 movants wish to bring a motion for reconsideration or  
10 provide additional information regarding the timing of their  
11 incarcerations, the debtors, the creditors' committee, the  
12 (indiscernible) of course would consider it.

13 I'm happy to answer any questions Your Honor may  
14 have.

15 THE COURT: Okay. No. I think the objection was  
16 clear. Let me just ask, are any of Michael O'Brien, Anthony  
17 Olson, James Sprayberry, Otis Dahman, D-A-H-M-A-N,  
18 Christopher Freeman, Trever Olsen or Nickolas Colbert on the  
19 line? No. They also have not responded to the objection.

20 I will not grant any of these motions. I think as  
21 you noted there are somewhat different facts for each  
22 movant. Although, as I noted with regard to the ones that I  
23 granted, the forms of these motions has some real  
24 similarities and probably were circulating through the  
25 system.

1 A bar date is an important and not simply a  
2 tactical device in a Chapter 11 case as well recognized in  
3 the case law. It lets parties in interest know with  
4 reasonable promptness the identity of those making claims  
5 against the estate and the general amount of claims  
6 necessary to consider in formulating a Chapter 11 plan. See  
7 In re Calpine Corp., 2007 U.S. Dist. LEXIS 86514, at \*14-15  
8 (S.D.N.Y. November 21, 2007).

9 Bankruptcy Rule 9006(b) permits enlargement of the  
10 bar date deadline where the failure to act was the result of  
11 "excusable neglect". The Supreme Court interpreted that  
12 language, since it was not further defined in the rules or  
13 the Bankruptcy Code, in Pioneer Investments Services Company  
14 v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 395  
15 (1993). The Court held that the determination is fact-based  
16 considering all the circumstances but that the Court should  
17 be guided by the following factors: "(1) the danger of  
18 prejudice to the debtor; (2) the length of the delay and its  
19 potential impact on judicial proceedings; (3) the reason for  
20 the delay, including whether it was within the reasonable  
21 control of the movant; and (4) whether the movant acted in  
22 good faith".

23 The Second Circuit has expressly stated there is  
24 taking a "hard line" in applying the Pioneer test weighing  
25 heavily on giving the greatest weight to the third factor,

1 i.e., the reason for the delay, and stated that "the  
2 equities will rarely if ever favor a party who fail[s] to  
3 follow the clear dictates of a court rule." And that "where  
4 the rule is entirely clear, we continue to expect that a  
5 party claiming excusable neglect will, in the ordinary  
6 course, lose under the Pioneer test." In re Enron Corp.,  
7 419 F.3d 115, 122-23 (2d Cir. 2005), the Court applied that  
8 test not only to a court rule but also to a bar date order  
9 under the bankruptcy rules.

10 And Courts have done so consistently thereafter.  
11 See In re DPH Holdings Corp., 434 B.R. 77, 83 (S.D.N.Y.  
12 2010) and In re Musicland Holding Corp., 2006 Bankr. LEXIS  
13 2315, at \*10-11 (Bankr. S.D.N.Y. 2006) among other  
14 authorities.

15 Here, specific notice to these people was not  
16 required. The Court concludes that the debtor didn't know  
17 them specifically to be potential creditors of the debtor.  
18 So the wide notice campaign implemented by the debtors to  
19 reach creditors or potential creditors generally would  
20 suffice for due process purposes.

21 The Court's analysis of the requests therefore  
22 depends upon my assessment of whether notwithstanding that  
23 notice, the movants can be excused from missing the bar  
24 date. Unlike other incarcerated individuals, each of these  
25 movants, except for Mr. Olson, Mr. Freeman and Mr. Dahman,

1 was, on the record before me, incarcerated after the bar  
2 date and therefore was available in the public population to  
3 receive the notice that everyone else got. Their excuses  
4 that the mail wasn't operating well and even perhaps an  
5 implicit excuse that they had other things on their mind  
6 leading up to their incarceration during that notice period  
7 really doesn't suffice as an excuse. First, as far as  
8 notice is concerned, the mail was much less important factor  
9 for these people because, again, the debtors did not need to  
10 give them actual notice by mail but rather instead relied  
11 properly on the wide -- extremely wide, in fact -- notice  
12 campaign through various forms of media identified by Ms.  
13 Finegan in her filings in the court.

14 As to the latter point, as noted by now Chief  
15 Judge Swaine in *In re Motors Liquidation Company*, 599 B.R.  
16 706, 716 (S.D.N.Y. 2019), "a bar date rule that would lead  
17 to undisclosed subjective priorities of creditors, such as  
18 'I was busy with other things', would normally effect no  
19 viable gatekeeping function at all".

20 So as to those people, I will deny the motion for  
21 the reasons stated in the debtors' and the committee's  
22 objection.

23 I carefully considered the circumstances of Mr.  
24 Olson, Mr. Freeman and Mr. Dahman. It appears Mr. Olson was  
25 incarcerated only in July of 2020. Again, the bar date was

1 July 30, 2020. And it appears to me, therefore, that he had  
2 sufficient time to get notice before his incarceration.

3 Moreover, as I've noted, it has been well over a  
4 year since the bar date has passed and there's nothing in  
5 these -- in this motion or, frankly, the other motions  
6 either, to say when the movant actually learned of the bar  
7 date. And under those circumstances, the second factor  
8 listed by the Supreme Court in Pioneer argues against  
9 granting the motion as does the first factor, the danger of  
10 prejudice.

11 Really, based upon these types of vague motions  
12 where someone was incarcerated but only for a brief period  
13 before the bar date itself ran and well after the notice  
14 period came, under these circumstances, it would appear to  
15 me that that would open the gates too wide for additional  
16 claims to be filed after the personal injury settlement set  
17 forth in the plan was negotiated. The personal injury claim  
18 settlement, that is. I know that factor may change or might  
19 change depending on the outcome of this case, i.e., whether  
20 the structure of that plan will survive going forward. But  
21 on today's record, that factor also argues against granting  
22 the motion.

23 So I will not grant Mr. Olson's motion.

24 Mr. Freeman and Mr. Dahman's motions both state  
25 that they were incarcerated in May of 2020. The notice



1 period was substantially done before that time would suggest  
2 that they could have and should have been aware of the  
3 debtors' case, and therefore the bar date, before they were  
4 incarcerated. If they had made these motions months ago, I  
5 might well have granted them. But they did not. They made  
6 them well after a year after the bar date had passed. And  
7 they have not stated in their motions when they learned of  
8 the bankruptcy case.

9           Given the logic of the Motors Liquidation case,  
10 which again focused on the argument by a person who was  
11 incarcerated that his incarceration precluded him from  
12 filing a claim and after analyzing that argument reached the  
13 conclusion that he had not shown excusable neglect based on  
14 that argument, and the facts here as to when notice would  
15 reasonably have been received for due process purposes, and  
16 given the delay in making the motion, I conclude, based on  
17 weighing the Pioneer factors, that Mr. Freeman's and Mr.  
18 Dahman's motions should also be denied.

19           So you can email an order to chambers denying each  
20 of those seven motions.

21           MS. KNUDSON: Thank you, Your Honor. We will do  
22 that.

23           THE COURT: Okay. All right. I think that  
24 concludes this morning's calendar, right, on Purdue?

25           MS. KNUDSON: That's correct, Your Honor.

1 THE COURT: Okay. Very well. So I'll look for  
2 each of those orders which should be emailed to chambers.  
3 Thank you.  
4 (Whereupon, these proceedings were concluded at 10:53 a.m.)  
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I N D E X

R U L I N G S

DESCRIPTION

PAGE

LINE

Debtors' motion for entry of order authorizing 25 24

filing of certain information under seal

in connection with motion of debtors for entry

of order authorizing implementation of KEIP

and KERP programs granted

Motion of debtors for entry of order 32 22

authorizing implementation of 2022 KEIP and

KERP compensation programs granted

Final fee application of Reed Smith LLP as 37 9

an ordinary course professional for

compensation for services rendered in excess

of Tier 1 OCP cap for period 9/1/2021

through 2/28/2022 granted

Motions to file late proofs of claim by 40 12

individuals Glenn Dawson, Tony Callihan,

Tyler Ward and Daniel Rudd granted

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C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing transcript is a  
proceedings.



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Lisa Beck

Date: May 18, 2022

Veritext Legal Solutions

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[& - 4th]

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